

Achieving Peak Performance

Advanced Notarial Situations and Practices

*Kathleen Butler, Executive Director
American Society of Notaries*





“Advanced” Notary:

Educated – Has received training, maintains knowledge of laws and recommended practices.

Compliant – Diligently performs within the law.

Experienced - Routinely performs the various authorized notarial acts . Has navigated challenging situations.

Confident – Leverages these traits to act as own best advocate for proper procedure.

Knows that every notarial act is anchored by the fundamentals.

Fundamental Requirements of Notarization



SIGNER MUST:

Personally appear (RULE NUMBER ONE!)
Be **personally known** or have **satisfactory ID**
Display **comprehension** and **willing intent**



RECORD (document) MUST:

Indicate an **authorized notarial duty**, or the signer must choose
Be **appropriately signed...**

- in your presence (*signature witnessing, verification on oath/affirmation*) or
- acknowledged in your presence if previously signed (*acknowledgment only*)

Be **complete...** all pages, no blank documents



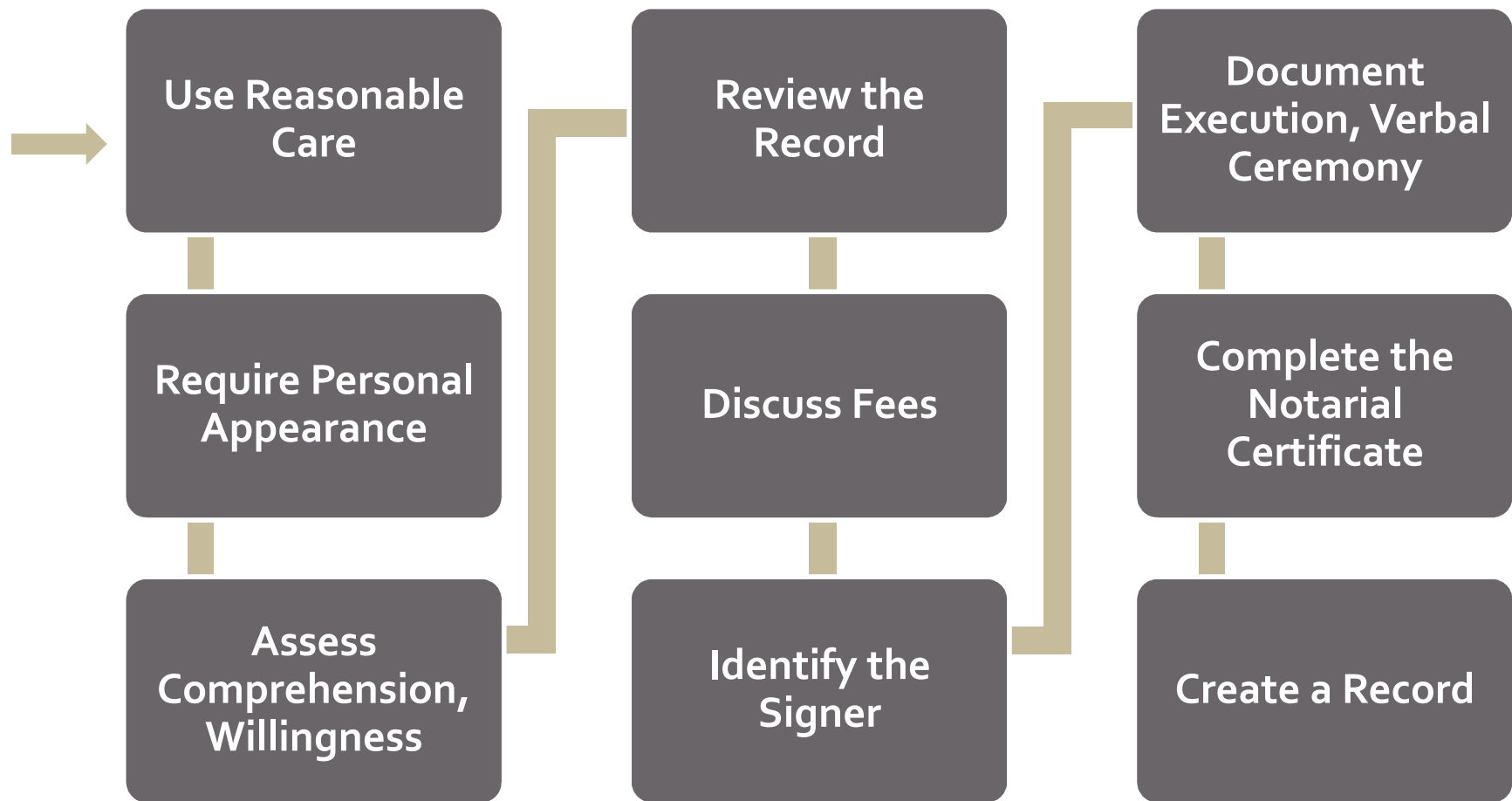
NOTARY:

No conflict of interest
Complete **notarial certificate** (block)
Thorough **journal entry**
Record every remote notarization session, and retain

Standard of Care: “Reasonable”

*The degree of care an
ordinarily prudent and rational
person would use in same or
similar circumstances.*

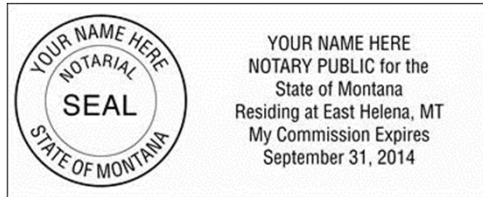
Fundamentals: Consistent Notarization Procedure



Terminology: Then & Now

Official stamp or seal

Official stamp



Wet-ink only

Elvis Presley

**Any tangible symbol;
or electronic sound,
symbol, process**

Ink-stamp

**Stamping
device**



Document

Record

*(paper or
electronic)*



Signer appearance - physical

Physical or remote



JOURNAL

Paper, bound

Paper or electronic



Notarial Certificate: Required Elements

*"Tells" you the notarial act to perform:
"Acknowledged before me...";
"Signed and sworn to before me...";
"Signed before me..."*

1: Venue

2: Statement of particulars (Date of notarial act; type of notarial act; name of signer)

3: Notary's official signature, reproducible (blue or black ink recommended)

4: Official stamp

(Rectangular; blue or black ink; circular seal with specified info; Notary's official name;
"Notary Public for the State of Montana; "Residing at..."; "My commission expires..."; plain border)

State of Montana

County of Lewis and Clark

1

2 This instrument was acknowledged before me on April 5, 2014, by
Sam Signer (only).

4



YOUR NAME HERE
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, MT
My Commission Expires
September 31, 2014

3 Nellie Notary

Notary Signature

Notary's Printed Name

Notary Public for the State of

Residing at

My Commission expires

Today: Common, Yet Challenging Issues

Signer:

Assessing comprehension and willingness

No satisfactory ID document, must rely on credible witness

Multiple signers, not all are present

Representative-capacity signer

Signature by mark

Physically unable signer

Record:

Notarial block issues (What act? Wording? Authorized duty? Missing language?)

Working with loose notarial certificates

Ineligible record presented for certified copy

Does it really require notarization?

You:

Recognizing conflict of interest

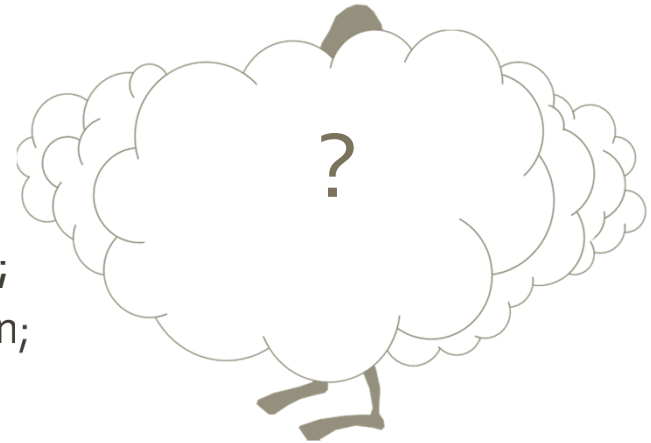
The notary as witness

Handling coercion

Assessing Comprehension and Willingness

Signers might:

- **Not understand** a record's purpose;
- Be **under improper pressure** to sign;
- Be **impaired**



How to proceed:

- Exercise reasonable care
- Question the signer
- If in doubt, decline to notarize
- Offer to see the signer later
- Always journal a refusal to notarize!

I'm sorry, but I must decline this notarization. I feel this person [does not understand the document's effects; is signing under improper pressure; is impaired].

Credible Witness as Satisfactory ID

REQUIREMENTS

Signer has NO acceptable form of documentary ID

One credible witness – **personally knows** the signer; **is personally known** by you
OR **has satisfactory ID**; is an **impartial third party** to the transaction

NOT for the signer's "convenience"

Signer, witness and notary are simultaneously engaged
(credible witness for remote signer must be in notary's physical presence)

STEPS

Place the witness under oath: "Do you swear under penalty of perjury that this is (name of signer)?"

Create two complete journal entries; one for witness' oath and one for the signer. Both sign their journal entries.

Proceed with notarization for the signer (signer signs the record if not already signed; perform verbal ceremony).

Complete the notarial block



Multiple Signers, Not All Present

Present Signer(s)

You may notarize only
for the present signer(s)

↓
Which is/are
present?

↓
Follow all
procedures for
notarization

↓
Notarial certificate and
journal entry indicate
ONLY the signer(s)
present before you



Other Signer(s) Not Present

Must appear for a separate notarial act

May see a
different notary

O
R

May see you at a
different time

↓
Other notary may
NOT "add" to your
notarial block; a
separate notarial
block is required

↓
A separate
journal entry is
required

↓
YOU may NOT "add"
to your previous
notarial block; a
separate notarial
block is required

↓
A separate journal entry
is required; note
relationship between
new and previous entry



Representative-Capacity Signer

Signer is signing on behalf of another person (or entity).

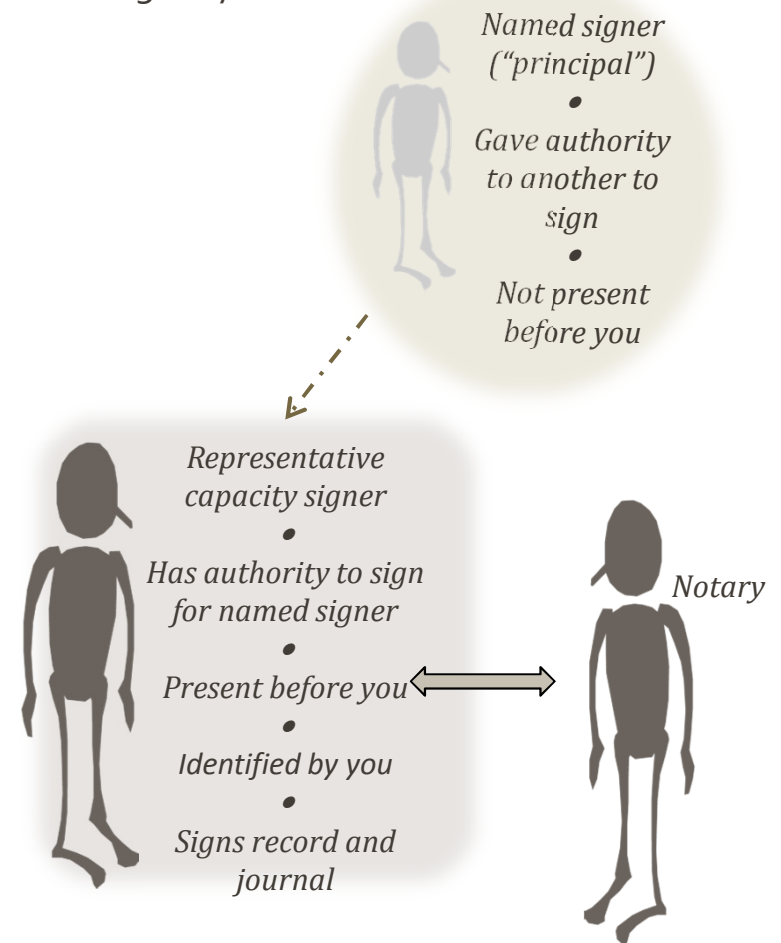
Acknowledgments and signature witnessing only.

All notarial fundamentals apply, except:

- person appearing is not the named signer;
- you must make additional determinations.

- > **Identify** the person who is signing in a representative capacity
- > Determine the **capacity** claimed (*such as attorney in fact*)
- > Determine the person's **authority** to act in the claimed capacity (*for example, signer presents a POA*); this is reasonable evidence (*reasonable care standard*)
- > Review or witness the signature on the record:

John Jones, [Title of Capacity] for Sam Signer
OR...
Sam Signer by John Jones, [Title of Capacity]



State of Montana
County of Lewis & Clark

This instrument was acknowledged before me on April 5, 2014
(Date)

By Roger Representative
(Name of Person Physically Present)

As Attorney in Fact
(Capacity Under Which the Person is Acting)

Of and for Sally Signer
(Named Signer of the Record Who is Not Present)



YOUR NAME HERE
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, MT
My Commission Expires
September 31, 2014

Nelly Notary
Notary Signature
MT notaries must complete the following, if not part
of stamp.]
Nelly Notary
Printed Name
Notary Public for the state of _____
Residing at _____
My Commission expires: _____, 20____.

Representative-Capacity Signer – cont.

Ensure the notarial block reflects a
representative-capacity signing.
State name of person signing; capacity; and
for whom the person is signing.

Journal entry's "Signer" is the
representative-capacity signer. Also note
this person's capacity, how you
determined authority, and for whom this
person signed.

Hot Tip:

MT law
requires entry
of the time of
notarization
and the issue
or expiration
date of the ID.

SIGNER'S PRINTED NAME Roger Representative		SIGNER'S SIGNATURE <i>Roger Representative</i>		DAYTIME PHONE (123) 333-4444	
SIGNER'S COMPLETE ADDRESS (STREET, CITY, STATE, ZIP) 123 Main Street, Helena MT 59601				VENUE (PLACE OF NOTARIZATION) Lewis & Clark Co., MT	
DOC. NAME, DESCRIPTION, # OF PAGES Agreement – 2 pgs	DOCUMENT OR SIGNATURE DATE 4-5-14	DATE/TIME OF NOTARIZATION 12:00 p.m.	<input type="checkbox"/> OATH/AFF OTHER: Representative capacity	<input checked="" type="checkbox"/> ACKNOWLEDGMENT	FEE N-A
DOC. NAME, DESCRIPTION, # OF PAGES	DOCUMENT OR SIGNATURE DATE	DATE/TIME OF NOTARIZATION	<input type="checkbox"/> OATH/AFF OTHER:	<input type="checkbox"/> ACKNOWLEDGMENT	FEE
DOC. NAME, DESCRIPTION, # OF PAGES	DOCUMENT OR SIGNATURE DATE	DATE/TIME OF NOTARIZATION	<input type="checkbox"/> OATH/AFF OTHER:	<input type="checkbox"/> ACKNOWLEDGMENT	FEE
SIGNER WAS: <input type="checkbox"/> PERSONALLY KNOWN <input checked="" type="checkbox"/> PRODUCED ID		IF CREDIBLE WITNESS(ES) USED FOR SIGNER IDENTIFICATION (WHERE ALLOWED), ENTER "CREDIBLE WITNESS(ES)" UNDER TYPE OF ID, AND RECORD WITNESS(ES) NAME/ADDRESS/SIGNATURE AND ID TYPE IN ADDITIONAL RECORDBOOK ENTRY.			
ID TYPE: MT Driver License EXPIRES OR ISSUED: Exp. 1-1-2015		SIGNER'S THUMBPRINT (WHEN REQUIRED)			
ADDITIONAL REQUIRED INFORMATION OR COMMENTS: Roger Representative signed as attorney-in-fact for Sally Signer. Presented power of attorney document.					

Signature by Mark

Montana law:

Recognizes a person's mark as his/her signature (MCA 1-5-602[12])

A person's "tangible symbol" • A person's "electronic signature" (electronic symbol, sound or process)

Same notarial fundamentals apply:

- If mark is made prior to notarization (acknowledgment only), the signer may simply acknowledge his/her mark.
- Personally witness the signing for a verification on oath/affirmation, a signature witnessing or for an unsigned acknowledgment.
- Use the standard notarial block for the notarial act.
- The signer will sign your journal entry with his/her mark.
- Note in your journal entry the manner in which the signer signed.

Hot Tips:

- Mark might not match signed identification document.
- The mark must be made **UNASSISTED**.



Sam Signer

*Wet-ink mark • Signature stamp • Typed characters
An attached image or sound file • An electronic process that signifies signature intent • Etc. Etc. Etc.*

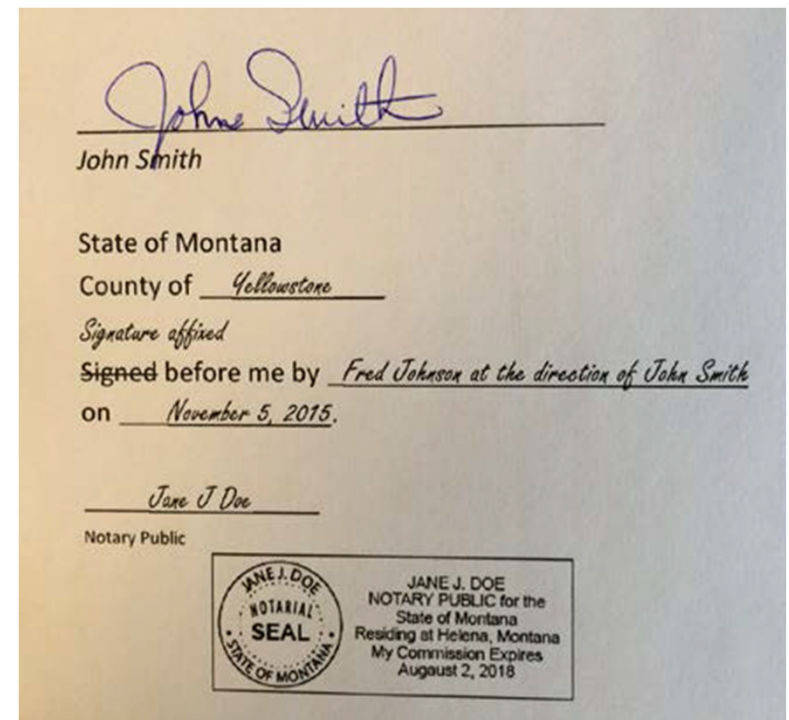
Physically Unable Signer

Montana law: authorizes signature by third party

Allows physically unable signer to direct another person to sign (MCA 1-5-623)

Rules apply:

- Person directed to sign ("third party") CANNOT be the notary.
- Physically unable signer and third party must be present before the notary.
- Third party should be unbiased and independent; no beneficial gain
- Identify both the physically unable signer and third party
- Modify the certificate's statement of particulars to include, "Signature affixed before me by [name of person directed to sign] at the direction of [physically unable signer]...."
- Record names of the physically unable signer and the third party in your journal. Third party will sign the journal entry. In Comments, note the circumstances of the signing.



Notarial Certificate Issues

*Prima facie evidence of
the notarial act –
IMPERATIVE that you
get it right!*

1: Venue

2: Statement of particulars (Date of notarial act; type of notarial act; name of signer)

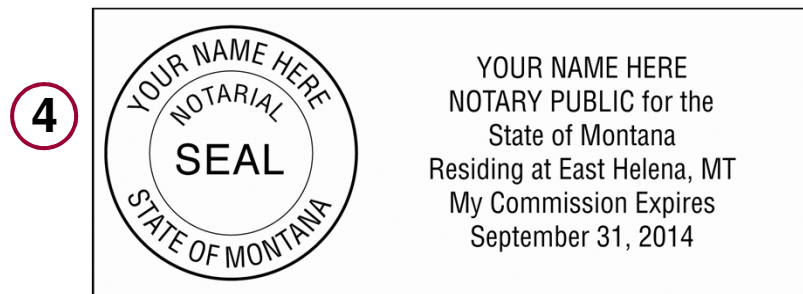
3: Notary's official signature, blue or black ink

4: Official stamp

(Notary's official name – typed, stamped or printed; title of official;
"Residing at..."; commission expiration date)

State of Montana
County of Lewis and Clark **1**

2 This instrument was acknowledged before me on April 5, 2014, by
Sam Signer (only).



3 Nellie Notary
Notary Signature

Notary's Printed Name
Notary Public for the State of _____
Residing at _____
My Commission expires _____

Assess the Notarial Certificate

Notarial Certificate Issues

What notarial act does the block “tell” you to perform? Is that act an authorized duty?

“Subscribed” or “executed” = signed

ACKNOWLEDGMENT

This instrument was **acknowledged** before me on [date] by [name of signer(s)].

[Notary stamp, signature block]

VERIFICATION on OATH / AFFIRMATION [“Jurat”]

This instrument was **signed and sworn to / affirmed** before me on [date] by [name of signer(s)].

[Notary stamp, signature block]

SIGNATURE WITNESSING

This instrument was **signed before me** on [date] by [name of signer(s)].

[Notary stamp, signature block]

Assess the Notarial Certificate

Notarial Certificate Issues

What notarial act does the block “tell” you to perform? Is that act an authorized duty?

Is the wording of the notarial block acceptable under Montana law?

Statutorily required information • MT statutory wording OR adequately states your actions



ACKNOWLEDGMENT

[Venue]
This instrument was acknowledged before me on [date] by [name of signer(s)].

[Notary stamp, signature block]



ACKNOWLEDGMENT

[Venue]
On this day of [date] before me, a Notary Public for the State of [state], personally appeared [signer], known or proven to me to be the person named in the foregoing, and acknowledged to me that [he/she] executed the same as [his/her] free act and deed, for the purposes stated therein.

[Notary stamp, signature block]



“ACKNOWLEDGMENT”

Sworn and **acknowledged** on [date] by [name of signer(s)], personally known to me, who so sayeth that the facts stated herein are true and complete.

[Affix seal here]

Assess the Notarial Certificate

Notarial Certificate Issues

What notarial act does the block “tell” you to perform? Is that act an authorized duty?

Is the wording of the notarial block acceptable under Montana law?

Does the notarial block include certifications you are not authorized to perform?



ACKNOWLEDGMENT

[Venue]

This instrument was **acknowledged** before me on [date] by [name of signer(s)].

[Notary signature block]

“ACKNOWLEDGMENT”

[Venue]

On this day of [date] before me, a Notary Public for the State of [state], personally appeared [signer], **proven to me to be rightfully residing in Montana**, and acknowledged to me that [signer] executed the same as [his/her] free act and deed, for the purposes stated therein.

[Notary signature block]

“ACKNOWLEDGMENT”

Sworn and acknowledged on [date] by [name of signer(s)], **who proved by the presentation of documentary evidence that the facts stated herein are true and did occur.**

[Notary signature block]

No Notarial Certificate

Notarial Certificate Issues

- The notary **cannot recommend or choose** notarial language; the signer must do so.
- You may:
 - **show** notarial language samples*
 - **explain** the purpose of each notarial act
 - **ask** the customer to choose
- The signer may ask the document creator, a relying party or attorney for assistance.
- Journal entry should note "No notarial certificate; signer chose the notarial act."
- If **the signer cannot choose** the desired notarial act, the notary must decline to proceed.

"Would you like to....

"....**acknowledge** to me that you signed the document of your own free will, for the purposes stated in the document?"

"... **swear or affirm** under penalty of perjury that the contents of the document are true?"

"... have me simply **witness you signing** the document?"

**See the MT Secretary of State's web site for printable notarial blocks (formatted for Avery labels)*

No Notarial Certificate – cont.

Notarial Certificate Issues

Once the act is chosen, where should you affix the language?

- On the document signature page, beneath the signer's signature
- May be handwritten, stamped, typed, or affixed by label; must be room for the notarial block and notary's seal
- If not on signature page, back of the page is acceptable if ink will not bleed through

Only option might be a "loose" notarial certificate

Partnership Agreement

We, the undersigned, hereby enter into partnership for the purpose of marketing our jointly-developed Boffo Bison Burritos. We agree that each will bear an equal share of all profits, expenses, royalties, etc. earned or incurred as partners. This agreement is effective as of the latest signature date entered below.

Signatures:

James Signer

Date

Sam Signer

Date

State of Montana
County of _____

This instrument was acknowledged before me on
_____ by _____
(Name of Signer)

(Notary Signature)

[Affix seal/stamp to left or below]



YOUR NAME HERE
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, MT
My Commission Expires
September 31, 2014

Loose Notarial Certificates

Insufficient room on the record or the current language is too error-filled to correct

Must **ATTACH** to the record:

- **Physical attachment** – Tamper-evident (staple). No paper clips.
- **Contextual attachment** – describe the notarized document to prevent use on a different document
- **Evidence of attachment** – journal entry should note use of loose certificate

Where to attach - behind the signature page

Best practice: loose notarial certificate page should be same size as the document's pages (for recording purposes)

Partnership Agreement

We, the undersigned, hereby enter into partnership for the purpose of marketing our jointly-developed Boffo Bison Burritos. We agree that each will bear an equal share of all profits, expenses, royalties, etc. earned or incurred as partners. This agreement is effective as of _____.

This certificate is attached to a one-page record titled Partnership Agreement, dealing with Boffo Bison Burritos, and signed on [date].

State of Montana
County of _____

This instrument was acknowledged before me on _____ by _____
(Name of Signer)

(Notary Signature)
[Affix seal/stamp to left or below]

YOUR NAME HERE
NOTARIAL
SEAL
STATE OF MONTANA

YOUR NAME HERE
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, MT
My Commission Expires
September 31, 2014

Certified Copies – Is the Document Eligible?

- Notary must be presented with **original document**
- No vital or public records, **EVER**. No certified copies of vital or public records, **EVER**.
- Generally, any document that must be certified by the issuing agency or official custodian (*birth certificate, marriage/divorce record, official school transcript, etc.*) is **NOT ELIGIBLE**
- **Some document COPIES** are eligible for certification of copy by the document custodian
- Certification of copy by document custodian is **NOT** for documents that should be certified by the issuing agency or official custodian (*vital, public records, etc.*)



“Notarization” Requested; Not a Notarial Duty

*Not understanding
what a notary does*



*Expectations that
the notary cannot
lawfully meet*

Example: USCIS Form I-9

- Does NOT require notarization – NEVER sign/stamp this form in your capacity as a notary!
- **AS A PRIVATE CITIZEN**, you may perform the duties of the **Authorized Representative** (*review the employee's ID documents, fill in related form fields, sign Authorized Representative's attestation*)
- Sign as **AUTHORIZED REPRESENTATIVE**, not “Notary Public”
- **DO NOT** give in to the employee's insistence that you affix your notary stamp on the form
- **BEWARE** of additional employer forms directed to the notary; you might be notarizing your own signature

Employment Eligibility Verification USCIS Form I-9
Department of Homeland Security
U.S. Citizenship and Immigration Services
OMB No. 1615-0047
Expires 03-31-2016

▶ **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) First Name (Given Name) Middle Initial Other Names Used (if any)

Address (Street Number and Name) Apt. Number City or Town State Zip Code

Date of Birth (mm/dd/yyyy) U.S. Social Security Number E-mail Address Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

☐ A citizen of the United States

☐ A noncitizen national of the United States (See instructions)

☐ A lawful permanent resident (Alien Registration Number/USCIS Number):

☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy). Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: OR

2. Form I-94 Admission Number:

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: Country of Issuance:

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: Date (mm/dd/yyyy):

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: Date (mm/dd/yyyy):

Last Name (Family Name) First Name (Given Name)

Address (Street Number and Name) City or Town State Zip Code

STOP Employer Completes Next Page STOP

Form I-9 03/08/13 31 Page 7 of 9

Recognize Conflicts of Interest

Montana Code Annotated Sec. 1-5-625(1)(a), (b); (2)



OBVIOUS conflict:

- If you are a **SIGNING PARTY** to the record – you would be notarizing your own signature. Another notary must officiate for you. *(1-5-625(1)(a), MCA)*
- If you are an **INDIVIDUALLY NAMED PARTY** to the record – you are specifically identified in the record as a relying party or as one who will be affected by the record. *(1-5-625(1)(b), MCA)*
- If you will **DIRECTLY BENEFIT** by a transaction involving the record. *(1-5-625(b), MCA)*
- If you are **TIED TO A PARTNERSHIP OR CORPORATION** as a partner, stockholder, director, officer or employee and you are either individually named or sign as a representative. *(1-5-625(2), MCA)*

More subtle, still a conflict:

You are not directly named, but you will gain a financial or material benefit (*beyond a regular employee salary*)

- Commission or bonus based on the transaction
- Perks resulting from the transaction



The Notary as Signing (*Subscribing*) Witness

NO, even if the witness' signature
does not require notarization!

If your name appears in the record
(above the notarial certificate) FOR
ANY REASON, you cannot act as
the notary.

When You are Coerced to Notarize Improperly

Someone in
authority
pressures you
(employer)

Someone "in a
jam"
pleads with you
(customer or family)

NEVER
give in!

"I'm sorry, but the law simply does not allow me to do as you ask. My notary commission could be suspended or revoked. I would be liable for harm because my improper act would be deliberate."

"My bond protects the public, NOT me... if my bond is paid out I would have to repay the bond company and could still be liable for financial damages above the bond limits."

Know your Montana notary statutes WELL, so you can use them to inform others.



Recap:

Achieving Peak Performance

Advanced Notary attributes:

Educated... Compliant
Experienced... Confident

- Every notarial act is anchored by the fundamentals
- Does NOT mean you are skilled at “creatively” solving notarization issues

You ARE skilled at relying on your knowledge of notary law and fundamental practices to determine the proper steps for completing—or declining—the notarization.



Thank you!

“Achieving Peak Performance - Advanced Notarial Situations and Practices”
Presented by Kathleen Butler, Executive Director, American Society of Notaries.
Contact kathleen@asnnotary.org. Visit www.asnnotary.org.
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